



# DENVER

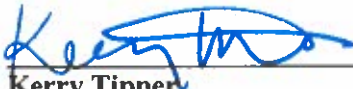
## EXCISE & LICENSES

### RULES GOVERNING HEARINGS BEFORE THE DEPARTMENT

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Effective date: February 1, 2024

Approved as to Form and Legality



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Date: 1/22/24

Approved and Adopted



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**Table of Contents**

**ARTICLE I – GENERAL PROVISIONS..... 3**

**Section 1.1 – Definitions..... 3**

**Section 1.2 – Authority, Scope, and Construction ..... 5**

**Section 1.3 – Representation before the Department ..... 5**

**Section 1.4 – *Ex Parte* Communications..... 5**

**Section 1.5 – Use of Cameras at Proceedings before the Department ..... 6**

**Section 1.6 – Orders Issued by the Director..... 6**

**Section 1.7 – Pre-Hearing Briefs..... 7**

**Section 1.8 – Copy Requests ..... 7**

**Section 1.9 – Requests for Interpreter Services ..... 7**

**Section 1.10 – Continuances..... 7**

**Section 1.11 – Subpoenas..... 8**

**Section 1.12 – General Hearing Procedures..... 9**

**Section 1.13 – General Post-Hearing Procedures ..... 10**

**ARTICLE II – RULES FOR NEEDS AND DESIRES HEARINGS..... 11**

**Section 2.1 – Posting Signs ..... 11**

**Section 2.2 – Petitions ..... 12**

**Section 2.3 – Neighborhood Witness Requirement ..... 12**

**Section 2.4 – Failure to Appear ..... 13**

**ARTICLE III – RULES FOR APPLICATION DENIAL APPEAL HEARINGS ..... 13**

**Section 3.1 – Petition for Appeal..... 13**

**Section 3.2 – Burden of Proof..... 13**

**Section 3.3 – Order of Presentation ..... 13**

**Section 3.4 – Withdrawal of Petition for Appeal ..... 13**

**Section 3.5 – Failure to Appear..... 14**

**ARTICLE IV – RULES FOR DISCIPLINARY HEARINGS ..... 14**

**Section 4.1 – Burden of Proof..... 14**

**Section 4.2 – Order of Presentation ..... 14**

**Section 4.3 – Recommended Decisions ..... 14**

**Section 4.4 – Final Decision..... 14**

**Section 4.5 – Settlement Agreements ..... 14**

**Section 4.6 – Failure to Comply with Order Accepting Settlement Agreement..... 15**

**Section 4.7 – Failure to Appear** ..... 15

**ARTICLE V – RULES FOR ADMINISTRATIVE CITATION HEARINGS** ..... 15

**Section 5.1 – Administrative Citations** ..... 15

**Section 5.2 – Petition for Appeal**..... 15

**Section 5.3 – Administrative Citation Hearing Officer** ..... 16

**Section 5.4 – Order of Presentation** ..... 16

## **ARTICLE I – GENERAL PROVISIONS**

### **Section 1.1 – Definitions**

In addition to the definitions set forth in Chapter 1, Article XII of Chapter 2, and Chapter 32 of The Denver Revised Municipal Code (the “Code”), the definitions below shall apply equally to these Rules Governing Hearings Before the Department (the “Rules”).

(1) “*Day*” means calendar day unless expressly stated otherwise. If the last calendar day of any period falls on a weekend, City holiday, or a day that the Department is closed for business, the last day of the period shall mean the next occurring business day.

(2) “*Denial Order*” means an Order issued by the Director denying an application.

(3) “*Designated Area*” means the area surrounding the proposed or licensed location that is determined by the Department to be the neighborhood under consideration.

(4) “*Final Decision*” means the final order issued by the Department after review and consideration of the Recommended Decision, any objections, responses to objections, and the entire hearing record.

(5) “*Hearing Officer*” means a person designated by the Director to conduct a public hearing to receive testimony and evidence, question the parties and any witnesses, and make a recommended decision on the matter. The term also includes the Director if the Director is conducting the hearing.

(6) “*Needs and Desires Hearing*” means a public hearing on an application where the Director may consider the reasonable requirements of the Designated Area and the desires of the adult inhabitants therein.

(7) “*Neighborhood Witness*” means an individual who satisfies the age requirement(s) to patronize the type of business for which a license is being sought, and who either resides in the Designated Area or owns or manages a business within the Designated Area.

(8) “*Order*” means any order issued pursuant to the Director’s authority under the Denver City Charter, the Code, or the Colorado Revised Statutes (“C.R.S.”).

(9) “*Order of Non-Compliance Hearing*” means a disciplinary proceeding regarding non-compliance with an Order Accepting Settlement Agreement where the sole issue is whether the violation(s) identified in the Order of Non-Compliance occurred.

(10) “*Party*” means the Applicant, Licensee, Respondent, the City Attorney, and the City. In a Needs and Desires Hearing, the term also includes known Parties in Interest who participate at the hearing. In an administrative citation hearing, the term also includes the Department and the Responsible Party.

(11) “*Party in Interest*” means a person who is afforded certain legal rights at a licensing hearing. The specific rights afforded to a Party in Interest vary depending on the type of license for which the Applicant is applying. The table below indicates, with an “X” or an “X\*”, which persons are considered a Party in Interest for each license type, and the legend below the table indicates which rights are afforded to a particular Party in Interest.

Party Type	License Type		
	Marijuana	Liquor	Cabaret
Applicant	X	X	X
DPD Commander			X
Neighborhood Witness	X	X	X
Relevant City Council Member(s)	X		
Relevant Registered Neighborhood Organization	X	X*	X*
School principal		X	

*X - The Party in Interest may testify, present evidence, and cross-examine witnesses.*

*X\* - The Party in Interest may testify and present evidence, but may not cross-examine witnesses or seek judicial review of the Department’s Final Decision.*

(12) “*Recommended Decision*” means a Hearing Officer’s findings of fact, conclusions of law, and the decision recommended to the Director following a hearing and/or review of written briefs.

(13) “*Relevant Registered Neighborhood Organization (Relevant RNO)*” means a Neighborhood Organization as defined in Chapter 12, Article III of the Code, registered with the Department of Community Planning and Development, whose boundaries overlap any portion of the Designated Area.

(14) “*Relevant City Council Member(s)*” means the City Council member(s) whose district boundaries overlap any portion of the Designated Area, including council members at-large.

(15) “*Respondent*” means a Licensee subject to disciplinary action pursuant to an Order issued by the Director.

(16) “*Rules*” means these Denver Department of Excise and Licenses Rules Governing Hearings Before the Department.

(17) “*Settlement Agreement*” means a written agreement between the Respondent and the City Attorney to resolve a disciplinary proceeding without the need for a hearing and which is subject to the approval of the Director.

## **Section 1.2 – Authority, Scope, and Construction**

(a) **Authority.** – Pursuant to section 32-19 of the Code, the Director may enact rules and regulations necessary for the purpose of administering and enforcing the provisions of Article I of Chapter 32 of the Code and any other ordinances or laws relating to and affecting the licensure of businesses and individuals that operate in the City. Pursuant to section 2-283(f) of the Code, the Director is authorized to promulgate rules and regulations to implement the use of administrative citations by the Department.

(b) **Scope.** – These Rules govern all licensing hearings and proceedings initiated after the effective date herein. These Rules supersede and replace any previous administrative citation rules promulgated by the Department and any policies and procedures adopted by the Department that pertain to hearings. This Article I applies to all proceedings before the Department.

(c) **Construction.** – These Rules shall be construed to promote the just and efficient determination of all matters presented at the hearing and to promote the fact-finding process.

## **Section 1.3 – Representation before the Department**

(a) **Attorney Representation.** – Unless provided otherwise by law or rule, anyone representing an Applicant or Licensee at a proceeding before the Department must be an attorney licensed to practice law in the state of Colorado.

(b) **Attorney Entry of Appearance—Required.** – Prior to representing an Applicant or Licensee at a proceeding, the attorney shall file a written entry of appearance with the Department that includes the attorney's: full name, attorney registration number, business address, telephone number, and email address.

(c) **Representation – Individuals and Sole Proprietors.** – An Applicant or Licensee who is a natural person or a sole proprietor may appear on their own behalf.

(d) **Representation – Closely Held Entities.** – A closely held entity may be represented at a hearing before the Department by an officer of such closely held entity upon compliance with the requirements stated in C.R.S. § 13-1-127, as amended. However, testimony that the officer has authority to appear on behalf of the entity, without other documentary evidence, shall not constitute satisfactory evidence that the person has authority to appear on behalf of the entity at the proceeding.

(e) **Representation – Relevant Registered Neighborhood Organizations.** – A Relevant RNO may be represented by any person who meets any legal requirement(s) to participate in the hearing and has the authority to represent the Relevant RNO at the specified public hearing.

## **Section 1.4 – Ex Parte Communications**

(a) **Ex Parte Communication – Prohibited.** – Except as provided in subsection (b) of this section, no party shall initiate any communication concerning the subject matter of the hearing to the

Director or Hearing Officer outside the presence of other known Parties to the proceeding. The Director and Hearing Officer shall not initiate or consider any communication concerning the subject matter of a proceeding currently before a Hearing Officer or the Director made outside the presence of known Parties to the proceeding.

**(b) Communications with Director or Hearing Officer.** – All communications with the Director or Hearing Officer concerning the subject matter of a proceeding, or a decision regarding the same, shall be made on the record with all other parties present or with all Parties copied on written correspondence. Written communications to the Department regarding the subject matter of a proceeding must be submitted in the manner required by the Department and must include all other Parties.

### **Section 1.5 – Use of Cameras at Proceedings before the Department**

**(a) Use of Recording Devices and Other Similar Devices – Approval Required.** – No person shall record, stream, or photograph any proceeding without first obtaining approval from the Director or Hearing Officer.

**(b) Standards for Approval.** – The Director or Hearing Officer, in their discretion, may allow, prohibit, or limit the use of recording devices or any other similar device to record, stream, or photograph any proceeding upon consideration of any of the following circumstances:

- (i) Whether the use of such equipment will adversely impact the decorum of the proceeding(s);
- (ii) Whether the use of such equipment will cause distractions or otherwise disrupt the proceeding(s);
- (iii) Whether principles of fairness would be promoted by the use of such equipment;
- (iv) Whether the use of such equipment will intimidate parties or witnesses to the proceeding(s); and/or
- (v) Any other reason deemed relevant by the Hearing Officer or Director.

**(c) Request in Writing to Record, Stream, or Photograph Proceeding – Required.** – Any person wishing to record, stream, or photograph a proceeding shall file a written request with the Department at least two (2) business days prior to the hearing, in the manner required by the Department. At a minimum, the request must state the following:

- (i) The date, time, and location of the hearing;
- (ii) The type of any camera, microphone, and associated equipment proposed for use at the hearing;
- (iii) The proposed location of any camera, microphone, and associated equipment in the hearing room; and
- (iv) The name and phone number of any person(s) who will be operating the equipment.

### **Section 1.6 – Orders Issued by the Director**

In the event of any conflict between an Order issued by the Director and any policy, procedure, guideline, or other order issued by a Hearing Officer, the Order issued by the Director shall control.

## **Section 1.7 – Pre-Hearing Briefs**

(a) **Scope and Purpose of Pre-Hearing Briefs.** – The purpose of a pre-hearing brief is to define the issues to be presented before the Hearing Officer, identify any witness(es) and exhibit(s) to be presented, identify the time required to present the Party’s case, disclose generally the nature of the testimony of any witness(es), and include any other information required by the Hearing Officer in conformance with these Rules.

(b) **Pre-Hearing Briefs; Time for Filing.** – Any Party may file a pre-hearing brief for review prior to a proceeding. The Director or the Hearing Officer, in their discretion, may require the Parties to file a pre-hearing brief(s). Pre-hearing brief(s) must be filed at least fourteen (14) days prior to the hearing date and all Parties must be provided a copy of the filing. Late filings shall not be accepted. The deadlines identified in this paragraph (b) may be amended at the discretion of the Hearing Officer.

(c) **Responses to Pre-Hearing Briefs; Time for Filing.** – Any Party may file a response to a pre-hearing brief. If filed, the response must be filed no later than seven (7) days after the filing of the pre-hearing brief and all Parties must be provided a copy of the filing. A Party may request additional time to respond to the pre-hearing brief for good cause shown. Late filings shall not be accepted. The deadlines identified in this paragraph (c) may be amended at the discretion of the Hearing Officer.

## **Section 1.8 – Copy Requests**

(a) **Colorado Rules of Civil Procedure related to Discovery; Inapplicable.** – The Civil Rules of Procedure relating to case management, disclosure, and discovery do not apply to hearings and proceedings before the Department. The Parties are encouraged to voluntarily work together to resolve the case, simplify issues, and exchange information relevant to the case prior to a hearing.

(b) **Requesting Copies of Records.** – Any Party may file a copy request to obtain records from the Department in preparation for a proceeding. Such requests shall be made in writing with the Department in the manner required by the Department and pay all associated fees.

## **Section 1.9 – Requests for Interpreter Services**

Any Party may request a foreign or sign language interpreter for any proceeding. Such requests must be made in writing in the manner required by the Department. At a minimum, requests must include the following: the name of the person who requires interpreter services, the address that qualifies the person as a Party in Interest (if applicable), the Business File Number(s) associated with the proceeding, the language for which an interpreter is needed, and whether the Recommended Decision and/or Final Decision need to be translated. If an interpreter is not available for the scheduled hearing date, the hearing will be continued.

## **Section 1.10 – Continuances**

(a) **Continuance Request.** – Any Party may file a motion to continue a proceeding.



(b) **Grounds for Continuance.** – Hearing dates may be revised or continued at the discretion of the Director or Hearing Officer, upon a showing of good cause, or upon uncontested motion of the Parties. For purposes of this section, circumstances that indicate “good cause” include, but are not limited to: occurrences outside of the requesting party’s control, necessity for interpreter services or other similar or relevant accommodations, an unanticipated change in the status of the case, or a significant revision or amendment to the application.

(c) **Effect of Continuing or Rescheduling Proceeding.** – In the event that a proceeding is rescheduled or continued, the Applicant or Licensee shall amend any applicable posting to reflect the rescheduled date and time of the proceeding. Additionally, the Applicant shall cause the amended notice to remain in place for at least the minimum number of days required by law for the posting, or for a longer period as specified in an Order.

### **Section 1.11 – Subpoenas**

(a) **Subpoenas Authorized.** – The Director or the Hearing Officer has the power to issue and quash subpoenas to require the presence of persons and the production of papers, books, and records which are necessary for a given matter. However, Parties are encouraged to ensure witness participation at a proceeding without resorting to a subpoena. Subpoenas shall generally comply with Rule 45 of the Colorado Rules of Civil Procedure (“C.R.C.P.”) to the extent that those provisions are consistent with these Rules. Subpoenas shall be issued without discrimination between Parties by the Director or Hearing Officer; however, a subpoena may be quashed *sua sponte* for the criteria identified in subsection (f) below. A party is not required to comply with a subpoena that has not been approved by the Director or a Hearing Officer.

(b) **Request for Subpoena.** – Any Party may request the issuance of a subpoena in accordance with these Rules and in the manner required by the Department. Requests must be made in writing and copy all known Parties. The form and content of the subpoena shall comply with C.R.C.P. 45(a)(1) and include, at a minimum, the following:

- (i) The title of the action and its case number;
- (ii) Each person to whom the subpoena is directed and a corresponding directive to do one or both of the following at a specified time and place: attend and testify at a hearing; or produce designated books, papers and documents, whether in physical or electronic form (“records”), or tangible things, in that person’s possession, custody, or control;
- (iii) The name(s) of each Party and the Party’s attorney, if any, requesting the subpoena;
- (iv) The name(s), address(es) phone number(s), and email address(es), where known, of the attorneys for each of the Parties and of each Party who has appeared in the action without an attorney; and
- (v) If production of records or a tangible thing is sought, the party requesting the subpoena must attest that they will comply with C.R.C.P. 45(c) and (d).

(c) **Time Limits.** – Any request for subpoena(s) must be submitted at least fourteen (14) days before the hearing. The Director or Hearing Officer may approve late requests for good cause. For purposes of this section, circumstances that indicate “good cause” include, but are not limited to: occurrences outside of the requesting party’s control, necessity for interpreter services or other

similar or relevant accommodations, an unanticipated change in the status of the case, or a significant revision or amendment to the application.

(d) **Service.** – Subpoenas must be promptly served by the Party seeking the subpoena. Subpoenas may be served by personal service as provided in C.R.C.P. 4(e), via certified mail to the subpoenaed person at the last known address provided to the Department, or to the person’s identified registered agent.

(e) **Challenging a Subpoena.** – Any party wishing to challenge or object to a subpoena must do so within seven (7) days of service of the subpoena. Challenges and objections must be made in writing in the manner required by the Department and must detail the reason(s) the subpoena should be quashed. The Director or Hearing Officer may also hold a pre-hearing conference to hear from the Parties to rule on the challenge. The Director or Hearing Officer, upon review of the challenge, may deny the request, quash the subpoena, or modify the subpoena in the same manner as provided in C.R.C.P. 45.

(f) **Quash Considerations.** – The Director or Hearing Officer may quash a subpoena for any of the following reasons:

- (i) The subpoena fails to allow a reasonable amount of time for the subpoenaed party to comply;
- (ii) The subpoena requires a person who is neither a Party nor a Party’s officer to attend a hearing in any county other than where the person resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court;
- (iii) The subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies;
- (iv) The subpoena requires material or a witness to be produced under this rule which contains matter that is irrelevant or does not relate to the subject matter of the proceeding;
- or
- (v) The subpoena subjects a person to undue burden.

(g) **Payment for Mileage.** – If the subpoena requires a person’s attendance, the payment for one day’s mileage for each day the subpoenaed party must appear must be tendered to the subpoenaed person by the Party requesting the subpoena at the time of service of the subpoena or within a reasonable time after service of the subpoena, but in any event prior to the appearance date. Payment for mileage need not be tendered when the subpoena is served on behalf of a government entity.

### **Section 1.12 – General Hearing Procedures**

(a) **Recording of Hearings – Required.** – The Director or Hearing Officer shall cause all hearings to be electronically recorded. If a hearing is not recorded or if the recording equipment fails, the Director or Hearing Officer, in their discretion, may order a new hearing or recreate the record from exhibits admitted into evidence and the notes of the Hearing Officer.

(b) **Hearing Officer Controls Hearings.** – The Hearing Officer shall control the conduct of persons attending the hearing to maintain order, promote efficiency in the presentation of relevant

evidence, preserve decorum, prevent disruption and distraction within the proceedings, preserve fairness and respect for all parties, and prevent intimidation of witnesses and others. The Hearing Officer may issue rulings and/or orders that are consistent with these Rules in order to control the hearing, including but not limited to orders or rulings that:

- (i) Limit the presentation of evidence, testimony, or cross-examination to prevent irrelevant, repetitive, or cumulative evidence or examination; and
- (ii) Order any person to be removed from the hearing.

(c) **Hearing Location and Length.** – Hearings shall be conducted at the location and in the manner required by the Department and shall last no longer than four (4) hours unless otherwise specified by the Department. If all parties agree, the Hearing Officer, in their discretion, may allow a hearing to continue for one (1) additional hour. If the hearing is not completed within the allotted time, the Hearing Officer may continue the hearing to a new date(s).

(d) **Permissible Evidence.** - All relevant evidence is admissible, including hearsay evidence that is offered with sufficient reliability. Any document contained in the Department’s official file does not automatically become part of the hearing record unless it is admitted as evidence at the hearing.

(e) **Exclusion of Evidence.** – The Hearing Officer, in their discretion, may exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of irrelevant or cumulative evidence. The exclusion of evidence at a hearing is reviewable by the Director.

(f) **Testifying Under Oath.** – All testimony shall be given under oath.

(g) **Questioning by the Hearing Officer.** – The Hearing Officer may question any Party or witness.

(h) **Expert Witnesses.** – A witness intending to give expert testimony in a proceeding before the Department must first be qualified by the Hearing Officer as an expert. At least seven (7) days prior to the hearing, Parties shall file a list of any witness(es) they intend to call as an expert witness. This list must include at a minimum, each witness’s name, field of expertise, and curriculum vitae, as well as the nature of the witness’s testimony and any reports or documents created by the witness intended to be admitted at the proceeding which support the witness’s opinion.

### **Section 1.13 – General Post-Hearing Procedures**

(a) **Recommended Decision.** – After considering all the evidence, the Hearing Officer shall make a Recommended Decision to the Director.

(b) **Email/Mailing of the Post-Hearing Filings and Determinations.** – The Recommended Decision shall be sent to the e-mail address for the Applicant or Licensee that is on file with the Department and may be mailed via U.S. mail upon request to the Department. The Recommended Decision shall also be sent via email to any Party who requests the Recommended Decision and provides their e-mail address to the Hearing Officer at the hearing.

(c) **Objections to the Recommended Decision.** – Any Party may file written objections to the Recommended Decision within fourteen (14) days from the date the Recommended Decision is mailed to the parties, unless otherwise specified by the Director. Objections must be sent in the manner required by the Department to the Department and all Parties who were sent the Recommended Decision. Objections that do not comply with this rule will not be considered.

(d) **Responses to Objections.** – If written objections are filed, any Party may file a written response to the objections within seven (7) days of the mailing date of the objections, unless otherwise specified by the Director. Responses to objections must be sent in the manner required by the Department to the Department and to all Parties who were sent the Recommended Decision. Responses that do not comply with this rule will not be considered.

(e) **Final Decision or Determination by the Director.** – Prior to issuing a Final Decision on any matter, the Director shall review and consider the Recommended Decision, any objections, any responses to objections, the entire record, whether such record should be reopened, the facts and evidence adduced as a result of the Department’s investigation and the public hearing required, and any other pertinent matters affecting the qualifications of the Applicant, Licensee, or Respondent. The Department will send the Final Decision via certified mail to all Parties who were sent the Recommended Decision.

(f) **Applicability to Administrative Citation Hearings.** This section shall not apply to administrative citation hearings.

## **ARTICLE II – RULES FOR NEEDS AND DESIRES HEARINGS**

### **Section 2.1 – Posting Signs**

(a) **Posting Sign Requirements.** – Any sign posting notice of a hearing governed by these Rules shall comply with the following requirements:

(i) The sign must be sturdy and white, not less than 22 inches wide and 26 inches in height, with letters not less than one inch in height.

(ii) At all times during the posting period, the sign must contain all required content provided to the Applicant or Licensee by the Department.

(iii) The sign shall indicate the license type as well as the name and address of the Applicant or Licensee and any partners or officers of the Applicant or Licensee. The sign may be posted inside of the proposed premises but must be posted so as to be conspicuous and plainly visible to the general public. For Common Consumption Area applications and licenses, a posting sign must be placed in a conspicuous place at each participating business.

(iv) A map of the Designated Area must be attached to the sign and must indicate the area in which petitions for or against the application may be circulated and from which witnesses may testify.

(v) The sign must inform the public of the Department’s process for scheduling an evening Needs and Desires Hearing.

(vi) The sign shall comply with any other requirements ordered by the Director.

(b) **Failure to Adhere to Notice Requirements.** – An Applicant or Licensee shall comply with all applicable notice requirements related to the application. If the Applicant or Licensee fails to adhere to the notice requirements, the Director, or the Hearing Officer, in their discretion, may reschedule the Needs and Desires Hearing and require an additional period of posting, or deny the application.

## **Section 2.2 – Petitions**

(a) **Petition Forms.** – Any petitions submitted for consideration at a Needs and Desires Hearing must be completed on forms provided by the Department.

(b) **Circulator Age Requirement.** – Any person who circulates petitions for a Needs and Desires Hearing must be eighteen (18) years of age or older, but is not required to be a resident of the Designated Area.

(c) **Commencement of Circulation.** – Circulators of petitions for a Needs and Desires Hearing may begin gathering petitions on the day following the date that notice is posted. Signatures obtained before this date shall not be considered.

(d) **Limitation on Signatures.** – A Party in Interest may sign no more than one petition regarding the same application. If a Party in Interest wants to change their position regarding the issuance of the license after signing a petition form, they must appear at the Needs and Desires Hearing and request that their name be stricken from one petition and added to the other.

(e) **Signature Requirements.** – Any signature not in compliance with the following requirements shall be disqualified from consideration:

- (i) Signatures may be obtained only from individuals who are Parties in Interest.
- (ii) Petitions must be signed in the presence of the petition circulator.
- (iii) Individuals signing the petition must respond to every question presented on the petition.

(f) **Challenges to Validity.** – Any Party may challenge the validity of any petition signature(s) and/or address(es) that do not meet the requirements set out in this section 2.2. A Hearing Officer may allow any such Party additional time after the hearing to file objections to petition signatures prior to issuing a Recommended Decision. The Department reserves the right to verify all signatures and to strike any signatures that do not meet these requirements.

## **Section 2.3 – Neighborhood Witness Requirement**

Any Applicant or Licensee must present at least one Neighborhood Witness (other than the Applicant or Licensee) to provide testimony establishing the reasonable requirements of the Designated Area and the desires of the adult inhabitants of the Designated Area for a license to issue.

## **Section 2.4 – Failure to Appear**

Failure to appear at a Needs and Desires Hearing may result in the hearing being vacated and the application being denied. If an Applicant or Licensee fails to appear at a Needs and Desires Hearing and there is no opposition to the license, the Hearing Officer may recommend to the Director that the application be withdrawn rather than denied.

## **ARTICLE III – RULES FOR APPLICATION DENIAL APPEAL HEARINGS**

### **Section 3.1 – Petition for Appeal**

(a) **Petition for Appeal.** – Any Applicant or Licensee whose application has been denied without a public hearing may appeal the decision of the Director by submitting to the Department a petition for appeal of the Denial Order. If the petition for appeal is granted, a hearing on the Denial Order will be scheduled.

(b) **Petition for Appeal – Requirements.** – A petition for appeal of a Denial Order must comply with the following requirements:

- (i) The petition must be submitted on in writing on forms provided by Department;
- (ii) The petition must be submitted within ten (10) days of the mailing date of the Denial Order; and
- (iii) The petition must include the payment of a fee of \$150.00, which shall be refundable only upon a determination that the Denial Order be withdrawn.

(c) **Denial of Petition for Appeal.** – A petition for appeal of a Denial Order that does not comply with the requirements in these Rules shall not be approved.

### **Section 3.2 – Burden of Proof**

The Denial Order is presumed to be correct. The Applicant or Licensee shall have the burden of proving by a preponderance of the evidence that the application should not be denied. All claims must be reasonably based in fact; mere speculation or supposition is insufficient.

### **Section 3.3 – Order of Presentation**

The Applicant or Licensee will first present evidence in support of the application. Any Party will then have an opportunity to introduce evidence for or against the application and/or the petition for appeal. The Hearing Officer may require that the City Attorney or Department first present an opening statement for procedural efficiency.

### **Section 3.4 – Withdrawal of Petition for Appeal**

An Applicant or Licensee may submit a written request to the Director or Hearing Officer to withdraw the petition for appeal at any time. Upon approval, the petition for appeal shall be deemed withdrawn and the Denial Order shall be treated as the Final Decision of the Department.

### **Section 3.5 – Failure to Appear**

Failure to appear at a scheduled hearing on a Denial Order shall result in the petition for appeal being deemed withdrawn and the Denial Order shall be treated as the Final Decision of the Department.

## **ARTICLE IV – RULES FOR DISCIPLINARY HEARINGS**

### **Section 4.1 – Burden of Proof**

The City shall have the burden of proving by a preponderance of the evidence that the Respondent committed a violation of the Code or an applicable state law, or any rules and regulations promulgated pursuant to the Code or applicable state laws, or an Order issued by the Director.

### **Section 4.2 – Order of Presentation**

The City will first present evidence establishing the existence of a violation. The Respondent will then have an opportunity to introduce evidence in its defense. The City shall have the option to present a rebuttal. The Parties may present evidence and argument regarding appropriate penalties.

### **Section 4.3 – Recommended Decisions**

After considering all the evidence, the Hearing Officer shall make a Recommended Decision as to whether the alleged violation(s) has taken place. The Director shall determine the appropriate penalty, if any.

### **Section 4.4 – Final Decision**

After reviewing and considering the Recommended Decision, the record, and all filings, the Direction shall issue a Final Decision and shall determine an appropriate penalty, if any.

### **Section 4.5 – Settlement Agreements**

The Respondent and the City Attorney may enter into a Settlement Agreement to resolve the disciplinary matter without the need for a hearing, subject to the following conditions:

- (i) Twenty-Four Hour Notice. Settlement Agreements submitted to the Director within twenty-four (24) hours of a scheduled hearing shall not be approved. The timely submission of a Settlement Agreement shall constitute good cause to vacate the scheduled hearing by a Hearing Officer.
- (ii) Director Approval – Required. The Director has sole discretion to approve or reject a Settlement Agreement.
- (iii) Approval Order. If a Settlement Agreement is accepted, the Director will issue an Order Accepting Settlement Agreement adopting the terms of the Settlement Agreement. The Department will provide a copy of the Order to the Respondent. Such Order shall constitute a final agency action.

(iv) **Rejection Order.** If a Settlement Agreement is rejected, the Director will issue an Order so indicating and will reschedule the hearing. The Director's rejection of a proposed Settlement Agreement does not preclude the Director from considering and approving any subsequent Settlement Agreement submitted by the Parties.

#### **Section 4.6 – Failure to Comply with Order Accepting Settlement Agreement**

(a) **Orders of Non-Compliance.** – If the Director finds that the Respondent has violated any term or condition of a Settlement Agreement during the term of a suspended sentence, the Director may issue an Order of Non-Compliance to the Respondent, setting forth the violation(s) for which the Director intends to impose the suspended sentence and the dates of suspension.

(b) **Request for Hearing.** – Upon issuance of an Order of Non-Compliance, the Respondent may submit a request to the Department for an Order of Non-Compliance Hearing. Such request must be made in writing within ten (10) days of the Order of Non-Compliance in the manner required by the Department. Any request made after this deadline shall not be approved and the penalty required in the Order of Non-Compliance shall be imposed.

(c) **Burden of Proof.** – At an Order of Non-Compliance Hearing, the City shall have the burden of proving, by a preponderance of the evidence, that the violations identified in the Order of Non-Compliance occurred. If the violations identified in the Order of Non-Compliance are found to have occurred, the suspended sentence shall be imposed in a Final Decision by the Director.

#### **Section 4.7 – Failure to Appear**

If the Respondent fails to appear at a disciplinary hearing and the Hearing Officer or Director determines that notice of the hearing was proper, the hearing may proceed on the scheduled date without the appearance of the Respondent. Testimony and evidence may be taken regarding the allegations in the Order to Show Cause or Order of Non-Compliance, and the license may be suspended, fined, or revoked without further notice.

### **ARTICLE V – RULES FOR ADMINISTRATIVE CITATION HEARINGS**

#### **Section 5.1 – Administrative Citations**

(a) **Form of Administrative Citations.** – Administrative citations shall be issued in the manner required by the Department and shall include all content required by the Code.

(b) **Withdrawal of Administrative Citation.** – Administrative citations may be withdrawn and reissued by the Department at any time prior to an administrative citation hearing. If an administrative citation is withdrawn, the administrative hearing officer shall vacate any hearing set on the matter.

#### **Section 5.2 – Petition for Appeal**



(a) **Petition for Appeal.** – A Responsible Party may appeal an administrative citation by submitting to the Department a petition for appeal of the administrative citation.

(b) **Petition for Appeal – Requirements.** – A petition for appeal of an administrative citation must comply with the following requirements:

- (i) The petition must be submitted in writing on forms provided by Department;
- (ii) The petition must be submitted within ten (10) days of service of the administrative citation; and
- (iii) The petition must include the payment of a fee of \$150.00, which shall be refundable only upon a determination that the administrative citation be dismissed or withdrawn.

(c) **Denial of Petition for Appeal.** – A petition for appeal of an administrative citation that does not comply with the requirements in these Rules shall not be approved.

### **Section 5.3 – Administrative Hearing Officer**

(a) **Qualification of Administrative Hearing Officers.** – Administrative hearing officers shall be appointed by the Director and shall serve at the Director’s pleasure. Administrative hearing officers shall be an attorney licensed to practice law in Colorado.

(b) **Powers and Duties.** - In addition to powers held by hearing officers in these Rules, administrative hearing officers shall have the power and duty to issue an administrative enforcement order on any matter subject to judicial review. Upon issuance of the administrative enforcement order, the Department will cause the administrative enforcement order to be sent all Parties via certified mail.

### **Section 5.4 – Order of Presentation**

The Department will first present evidence establishing the existence of a violation. The Responsible Party will then have an opportunity to introduce evidence in its defense. The Department shall have an opportunity to present a rebuttal if it chooses to do so. The Parties may present evidence and argument regarding appropriate penalties.